IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 259 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DARJI JETHALAL KANJIBHAI

Versus

ADHIA AMICHAND KESHAVJI

Appearance:

MR AN PATEL for Petitioner

MR CHETAN PANDYA FOR MR SV RAJU for Respondent

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 27/06/2000

ORAL JUDGEMENT

At the outset of hearing, learned advocate for revision -petitioner requested this Court to permit him to amend cause title by permitting him to write "Section 29(2) of the Bombay Rents Hotel & Lodging House Rates Control Act, 1947 in place of Sections 115 and 151 of Code of Civil Procedure". Leave granted.

2. This is a Civil Revision Application filed under Section 29(2) of the Bombay Rents Hotel & Lodging House

Rates Control Act, 1947 (in short " the Act" for the sake of brevity and convenience), directed against judgment Exh. 15 dated 20th February, 1988 rendered by 2nd Extra Assistant Judge, Rajkot District at Gondal, (who will hereinafter be referred to as the "Appellate Judge"), rendered in Regular Civil Appeal No.38 of 1983 which was pending on his file whereby he was pleased to reverse the judgment Exh. 39 and decree both dated 29th December, 1982 rendered by 2nd Joint Civil Judge (J.D.) at Gondal, (who will hereinafter be referred to as the "trial Judge",) in Regular Civil Suit No. 164 of 1981 which was pending on his file.

Here in this Civil Revision Application, revision petitioner is the defendant/tenant, whereas revision opponent is plaintiff/landlord. The parties will be referred to hereinafter as the plaintiff and the defendant for the sake of convenience.

2. The facts leading to this Civil Revision Application in a nutshell can be summarized as follows:-

As per case of the plaintiff, he is an owner of the suit premises the description of which is given in Para 1 of the plaint. It is his case that originally the suit premises were of the ownership of his father -Keshaji. His father Keshaji Madhaji Adhia executed his Will in his favour in the year 1970 and thus, he has become an owner of the suit property, after the death of his father.

On or about 25th January, 1971, the suit property was let to defendant for rent of Rs.15/- per month. It is the case of the plaintiff that he is residing in the house of his brother as tenant and he is paying rent Rs. 25/- p.m. to his brother. His brother has given him notice in writing, requesting him to vacate the premises which are in possession of plaintiff and his family members. For personal bonafide requirement of the suit property, the plaintiff addressed a suit notice Exh. 21 dated 8th June, 1981 and called upon the defendant to vacate the suit premises. As defendant gave an evasive reply Exh. 23 to the said suit notice and did not hand over possession of suit premises to the plaintiff, plaintiff filed suit bearing Regular Civil Suit No. 164 of 1981 for eviction of the suit premises in the Court of 2nd Joint Civil Judge (J.D.) at Gondal against the defendant or or about 11-08-1981 mainly on following two grounds:-

(1) that the defendant/tenant is a tenant in arrears

of rent for more than six months; and that defendant has neglected to make payment thereof within one month after date of receipt of the notice. That his case falls under Section 12(3)(a) of the Act.

(2) plaintiff/landlord filed suit to recover possession of suit premises on the ground that the suit premises are reasonably and bonafide required by him for his occupation and for his family members. That his case falls under Section 13(1)(g) of the Act. He has also averred that greater hardship would be caused to him, if decree is refused in comparison to the hardship which would cause to defendant, if decree is passed.

He also prayed for a decree to recover mesne profits at the rate of Rs.15/- per month for the period from Shravan Sud 1 of S.Y. 2037 till the possession of suit premises is handed over to the plaintiff.

As against aforesaid case of the plaintiff, defendant appeared before the trial court and resisted the suit by filing his written statement at Ex.11. The necessary issues were framed by the trial court. Both the parties led their oral as well as documentary evidence in the suit in support of their respective cases. After appreciating evidence led by both the parties and after hearing the arguments of the learned advocates of both the parties, learned Judge of the trial court negatived the contentions of the plaintiff as averred in the plaint and ultimately by rendering his judgment dt. 29th December, 1982, he was pleased to dismiss the suit of the plaintiff with no order as to costs.

3. Being aggrieved against and dissatisfied with the said judgment of the trial court, original plaintiff/landlord filed Regular Civil Appeal No. 38 of 1983 in the Court of learned 2nd Extra Assistant Judge, Rajkot District at Gondal. After hearing the learned advocates of both the parties and after appreciating the evidence of both the parties which was led in the suit before the trial court, the learned Appellate Judge allowed the appeal of the plaintiff/landlord. The learned Judge of the appellate court was pleased to set aside the judgment and decree of the lower court and he was further pleased to decree the suit of the plaintiff. He was pleased to allow the appeal of the plaintiff/landlord mainly on the ground of personal

bonafide requirement of suit premises by the plaintiff/landlord and his family members. It appears from the record of the appellate court that the plaintiff/landlord did not press his case falling under Section 12(3)(a) of the Act, and therefore, there is no finding on the point of defendant having become tenant in arrears of rent for more than six months.

4. Being aggrieved against and dissatisfied with that judgment dt. 20/2/1988 of the Appellate Judge rendered in Regular Civil Appeal No. 32 of 1983, the original defendant/tenant has filed this Civil Revision Application challenging the correctness, legality and propriety of judgment of the appellate court.

5. I have heard the arguments advanced by Shri A.N.Patel, the learned advocate for the Revision -petitioner and Shri Chetan Pandya, the learned advocate for Revision opponent in detail at length. I have gone through the judgment of the appellate court.

6. Mr. A.N.Patel, the learned advocate has vehemently argued that the learned Appellate Judge has not appreciated the evidence of both the parties in its correct perspective. He has reached to wrong conclusion because he has not considered other evidence on record, and therefore the conclusion arrived at by the learned Appellate Judge is perverse. He has further argued that the learned Appellate Judge has not appreciated evidence in the manner in which ought to have been analysed and appreciated, and therefore, the judgment is not "according to law", and therefore, the same deserves to be set aside.

7. Shri Chetan Pandya, the learned advocate for revision opponent has argued that looking to the limited powers of this court under Section 29(2) of the Act, this court cannot rehear the matter and reappreciate the evidence and come to a different conclusion. That means what is arrived at by the Appellate Judge as per his argument is not wrong. According to him, judgment which is challenged in this Civil Revision Application is according to law, and therefore, findings arrived at by the learned Appellate Judge are not required to be disturbed.

8. Learned Advocates for both the parties have taken this court through the judgment of the Appellate Court by reading it in between the lines. Shri A.N.Patel, the learned advocate for the petitioner also attempted to read the judgment of the trial court. At this stage, it

is required to be noted that in this Civil Revision Application, the judgment of the Appellate Court is challenged and not the judgment of the trial court. The judgment of the trial court is merged into the judgment of the Appellate Court, and therefore, this court has only to scrutinize the judgment of the Appellate Court to satisfy itself as to whether the judgment rendered by the Appellate Judge is according to law or not. If answer is in negative, then certainly that judgment of the Appellate Court can be reversed, but if this court finds that the judgment is according to law, then looking to the powers of this court, the judgment of the appellate court cannot be set aside.

9. Shri A.N.Patel, the learned advocate for the petitioner has cited following few authorities on the point of scope and powers of this court which can be exercised under Section 29(2) of the Act. Shri Patel has cited the first authority on the point in the case of M/S KASTURBHAI RAMCHAND PANCHAL & BROS v. THE FIRM OF M/S MOHANLAL NATHUBHAI AND ORS, reported in 1968 (9) G.L.R. 729, wherein it is held as under :

> " the revisional jurisdiction with which the High Court is invested under sec. 29(2) is not merely in the nature of jurisdictional control. It extends to correction of all errors in the overall decision which would make the decision contrary to law". It is further held that "the jurisdiction of the High Court is to correct all errors of law going to the root of the decision which would, in such cases, include even perverse findings of facts, perverse in the sense that no reasonable person acting judicially and properly instructed in the relevant law would arrive at such a finding on the evidence on the record of the case".

By citing this decision, Shri A.N.Patel has argued that this court should reappreciate the evidence and come to the conclusion that findings arrived at by the learned Appellate Judge are perverse, and therefore, the judgment is not according to law.

Mr. Patel has cited the second authority in the case of T. SIVASUBRAMANIAM AND OTHERS v. KASINATH PUJARI AND OTHERS, report in 1999 (7) SCC 275. In this cited case, Section 25 of T.N.Buildings (Lease and Rent Control) Act, 1960 was dealt with. That Section 25 was with regard to revisional jurisdiction conferred on the

High Court. It is held that under Section 25 of the Act, the High Court can call for and examine the record of the appellate authority in order to satisfy itself as to the regularity of proceedings or the correctness, legality or propriety of any decision or order passed therein. It is further held that words " to satisfy itself" imply under Section 25 of the Act, no doubt, is power of superintendence and High Court is not required to interfere with the findings of fact merely because the High Court is not in agreement with the findings of the courts below. It is also true that the powers exercisable by the High Court under Section 25 of the Act is not to reappraise or reassess the powers for coming to a different findings contrary to the findings recorded by the courts below, but where a finding arrived at by the courts below is based on "no evidence", the High Court would be justified in interfering with such findings recorded by the courts below. There cannot be any dispute with regard to aforesaid legal position settled by the Hon'ble Supreme Court. It is not the case of the revision petitioner that this is a case of "no evidence". Herein this case, both the parties had ample opportunities to lead evidence and the courts below have analysed and appreciated the evidence led by both the parties, and therefore, to my mind, this authority is not applicable to the present case, particularly when it is not the case of revision petitioner that the judgment of the Appellate Court is based on " no evidence " .

Shri Patel has cited a third authority in the case of SHIV SARUP GUPTA v. DR. MAHESH CHAND GUPTA, reported in AIR 1999 SC 2507. In this cited case, Sec. 25-B(8) of the Delhi Rent Control Act, 1958 was considered. Section 25-B(8) is with regard to revisional jurisdiction exercisable by the High Court. It is held that revisional jurisdiction under Sec. 25-B(8) is not so limited as is under Sec. 115 of Civil Procedure Code nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or reappreciation of evidence merely because it is inclined to take a different view of the facts as if it were a Court of facts. It is also held that however the High Court is obliged to test the order of the Rent Controller on the touchstone of ' whether it is according to law '. For that limited purpose it may enter into reappraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached that conclusion on the material available. So by citing this authority, Mr. Patel has strenuously argued that this

court can reappreciate evidence and come to a conclusion that findings arrived at by the Appellate Judge are perverse, and therefore, the judgment based on that finding is not according to law.

10. As against above three authorities cited by Shri Patel, Shri Chetan Pandya, the learned advocate for the revision opponent has cited the following authorities :

In the case of PATEL VALMIK HIMATLAL AND OTHERS vs. PATEL MOHANLAL MULJIBHAI (DEAD THROUGH LRS.), reported in (1999) (1) GLR 15 which is equivalent to (1998) 7 SCC 383, Hon'ble Supreme Court has been pleased to make the legal position clear with regard to ambit and scope of Section 29(2) of the Act in Para 5 and 6 which read as under:-

5. The ambit and scope of the said section came up for consideration before this Court in Helper Girdharbhai v. Saiyed Mohmad Mirasaheb Kadri and after referring to a catena of authorities, Sabyasachi Mukharji, J. drew a distinction between the appellant and the revisional jurisdictions of the courts and opined that the distinction was a real one. It was held that the right to appeal carries with it the right of rehearing both on questions of law and fact, unless the statute conferring the right to appeal itself limits the rehearing in some way, while the power to hear a revision is generally given to a superior court so that it may satisfy itself that a particular case is decided according to law. The Bench opined that although the High Court had wider powers than that which could be exercised under Section 115 of the Code of Civil Procedure, yet its revisional jurisdiction could only be exercised for a limited purpose with a view to satisfying itself that the decision under challenge before it is according to law. The High Court cannot substitute its own findings on a question of fact for the findings recorded by the courts below on reappraisal of evidence. Did the High Court exceed its jurisdiction ?

6. The powers under Section 29(2) are

> revisional powers with which the High Court is clothed. It empowers the High Court to correct errors which may make the decision contrary to law and which errors go to the root of the decision but it does not vest the High Court with the power to rehear the matter and reappreciate the evidence. The mere fact that a different view is possible on reappreciation of the evidence cannot be a ground for exercise of the revisional jurisdiction.

11. Shri Chetan Pandya has cited a case of DECEASED JAGATSINH FATEHSINH THROUGH HEIRS & L.R. v. PARVATIBEN HARISHCHANDRA, THROUGH HEIRS & L.R. reported in 2000 (1) G.L.H. 323, wherein this court has, after following the decisions of the Hon'ble Supreme Court, held in respect of powers of this Court under Section 29(2) of the Act as under:

High Court -
(a) cannot function as a court of appeal;

(b) cannot appreciate the evidence on record;

(c) cannot discard concurrent findings of fact based on evidence recorded by the courts below; and

(d) cannot interfere on grounds of inadequacy or insufficiency of evidence at all or are perverse.

It is further held that -

"a different interpretation of facts is also not possible merely because another view on the same set of facts may just be possible".

Mr. Pandya has also cited other authorities but the legal position with regard to ambit and scope of Section 29(2) of the Act and powers of this High Court which can be exercised under Section 29(2) of the Act, is settled one and it would be a duplication of authorities, if referred to in this judgment.

12. Keeping in mind the aforesaid legal position, now I will deal with the rival contentions of both the parties. Shri Chetan Pandya has, by reading Para 18 of the judgment of the Appellate Court, argued that the Appellate Judge has discussed some admitted facts, meaning thereby defendant/tenant has no dispute whatsoever with regard to those admitted facts which can

be summarized as follows :-

(i) Defendant is a tenant for Rs.15/- per month as rent.

(ii) Plaintiff is residing at the premises of his brother;

(iii) Plaintiff has become an owner of the suit house under his father's will which was executed on 10th September, 1970 and that Will at Ex.18 is a registered one;

(iv) Suit property is described in Para 1 of the plaint.

(v) Plaintiff has a large family and he is in possession of three small rooms, while admittedly defendant is having a family consisting of eight members (there is some dispute with regard to number of family members of defendant).

(vi) Plaintiff's brother in whose house the plaintiff is residing has given the notice to the plaintiff on 1st June, 1981 calling upon the plaintiff to vacate the premises which are in his possession, as a result of which the plaintiff gave notice to the defendant calling upon him to hand over the possession of the suit premises let to him.

(v) The rent note is at Ex.24 which is dated 25th January, 1971. By proviso to Section 13(1)(g) of the Act, embargo on the landlord to recover possession of the premises on the ground of bonafide and reasonable requirement, if he has become the landlord, is lifted as the plaintiff has inherited the property under the Will after the death of his father.

(vi) Plaintiff is serving as LIC Agent and earning Rs.1,200/- per month. He has two sons, and out of two sons, one is doing business in cloths and another has a grocery shop.

These are the admitted facts which cannot be denied by the defendant.

13. Herein this matter, Mr. Chetan Pandya, by drawing attention of this court to Para 8 of cross-examination of the defendant, has argued that defendant has admitted the following facts in his cross-examination :

(i) Son of defendant was paying rent at the rate of Rs.15/- per month for the shop and his son was residing in the premises of one Balvantsinh on rental basis for rent at the rate of Rs.80/- per month.

(ii) Since two months before the date of his deposition recorded on 6th November, 1982, his son had come back to stay with him in the suit premises and that his son had handed over the possession of premises to its owner Balvantsinh two months before the date of his deposition.

(iii) With regard to the children of the defendant, he has admitted in his cross-examination that his four daughters have already married. It is not the case of the defendant that his four daughters with their husbands, are residing with him.

14. Shri A.N.Patel, the learned advocate for the revision petitioner has argued at length on the point of personal bonafide requirement of the suit premises under Sect. 13(1)(g) of the Bombay Rent Act and on the point of ambit and scope and powers to be exercised by this court under Sec. 29(2) of the Act.

15. It may be noted that looking to the judgment of the Appellate Court, learned advocate who appeared for the defendant/tenant before Appellate Court had limited his arguments only on the following three points :

(i) Defendant is not a tenant in arrears for more than six months because the plaintiff has addressed the suit notice calling upon the defendant to pay rent for only two months;

(ii) With regard to facts stating that plaintiff will not be put to greater hardship, if decree for possession is refused. As per Sub -para 2 of Para 16 of judgment of the Appellate Court, it was the only contention of defendant/tenant that plaintiff has no hardship, and no shortage of accommodation. It was contended by the defendant the he has only one room.

(iii) With regard to greater hardship which would be caused to the defendant if decree for possession is passed in favour of the landlord, it was contended that defendant will be put to greater hardship and he will be on footpath.

16. Except aforesaid three points, no other point was canvassed before the Appellate Court. From the aforesaid three points, this court finds that there was no contention whatsoever with regard to Section 13(1)(g) of the Act before the Appellate Court. As the learned advocate for defendant/tenant who appeared before the lower court had limited his arguments only on aforesaid three points, it can well be said that the defendant/tenant has given up all other points and disputes which he had taken in the suit before the trial court. Shri Chetan Pandya has cited a case of BAKARALI FATEHALI & ORS vs MOHAMMEDKASAM HAJI GULAMBHAI reported in 1996(1) 37(1) G.L.R. 96 in which by referring Supreme Court decision in a case of GAURI SHANKAR v. M/s. HINDUSTAN TRUST (PVT) LIMITED AND OTHERS, AIR 1972 SC 2091, it has been held that simply raising a point in the Memorandum of Appeal is not sufficient to show whether a particular point was actually argued or pressed before the court. Statement in the judgment of the Appellate Court that no such point has been argued has prima facie to be accepted as correct. Therefore, contention with regard to reasonable and bona fide requirement of plaintiff for the suit premises was not taken and that point was not argued before the Appellate Court, and therefore, it can be said that the point with regard to Sec. 13(1)(g) was given up by defendant/tenant. This can safely be said on reading Para 16 of judgment of Appellate Court.

17. Now the question which requires to be dealt with is with regard to hardship of respective parties. Shri A.N.Patel, the learned advocate for revision petitioner has argued that there are nine members in his family. As deposed to by the defendant in his evidence, it is his case that there are eight members in his family and out of which there are four daughters, one son, daughter in law, he himself and his wife. In his cross-examination, he has admitted that his four daughters have already married. As per his cross-examination, his son was separated from him and was residing in a rented premises of ownership of Balvantsinh and he was paying Rs.80/- per month as rent. He has admitted that after filing of the suit, his son vacated that premises and came back to reside in the suit premises with his parents, and therefore, on the date of the suit, there were only defendant and his wife i.e. two members in the family. As against this, plaintiff has deposed that there are nine members in his family and out of nine, he has five sons and two daughters. Out of five sons, one is married and is residing with his children. Plaintiff is in possession of a house having three small rooms. So as

per evidence, there are only two members in the family of the defendant on the date of the suit and as against this, there are nine members in the family of the plaintiff. The learned Judge of the Appellate Court has discussed, analysed and appreciated the evidence with regard to hardship in Paras 20 to 25 of his Judgment, for just decision on question of Hardship under Section 13(2) of the Act. He has discussed the evidence with regard to financial capacity of each party also. He has discussed the evidence with regard to number of members in the family of each party, and after appreciating the evidence, he has reached to the conclusion that greater hardship will be caused to the landlord by refusing the decree. This finding is based on evidence led by both the parties.

18. On the point of hardship, Shri Chetan Pandya has cited following authorities :

In case of RAJAN RATILAL PATEL v. MADHURIBEN RAMENDRABHAI DESAI, reported in 1998 (3), 39(3) G.L.R. 1986, the point of comparative hardship under Sec. 13(2) of the Bombay Rent Act and requirement of premises by the landlord is discussed. It is held that-

" the Court is not only required to consider the situation from the viewpoint of the tenant alone, but also to consider the situation from the view point of the landlord. Each party is required to show what hardship would be caused to him by granting or refusing to grant the decree. It would be unfair to ask a man to occupy rented premises when his own premises are available".

It is further held that-

" The tenant is simply not required to show only the inconvenience which he may suffer in the case, where the decree for eviction is passed, but he must also show his financial position and further whether he made any effort to have his own house".

In the present case on hand, defendant has not led any evidence on the point with regard to attempt made by him for finding out alternative accommodation which he can have, if decree is passed. Herein this case, plaintiff/landlord who has inherited house on death of his father under the Will, is the owner of the suit property. He is residing in the property of ownership of his brother and his brother has given a notice to evict

the premises which are in possession of the plaintiff. Naturally, if this type of notice is given, plaintiff will try to get his own property for his own use, and therefore, the plaintiff cannot be forced to inquire for other rented premises when he is having his own property. On this point, Shri Pandya has cited authority in case of NARHARI SOMABHAI KACHIYA v. VITHALDAS PARSHOTTAMDAS reported in 1998 (3) 38(3) G.L.R. 2607, wherein it has been held that the landlord cannot be forced to go out in the market and search for rented house for himself, especially when he owns a house.

19. Thus, the learned Appellate Judge has considered all evidence led by both the parties. Merely because, findings arrived at by the learned Appellate Judge do not suit the defendant's desire, it cannot be said that they are perverse. At the costs of repetition, it is stated that this is not the case of " no evidence ". Herein this case, the appellate Judge has appreciated the evidence, keeping in mind, the settled position of law with regard to appreciation of evidence.

In case of NARAIN PRASAD v. THE STATE OF RAJASTHAN AND ANOTHER, reported in AIR 1978 RAJASTHAN 162, it has been held as follows :-

" the process of appraising the evidence led by two parties can be equated almost to the process of holding a balance, the time honoured symbol of justice. Sometimes when the two pans of the balance are seemingly equal, even a slight evidence, circumstantial or otherwise, tilts the balance on one side and thereby probabilises the case of one party as against the other. In this process of holding the balance what pieces of evidence, of course excluding inadmissible evidence, would lean the balance in favour of one party is dependent on the evidence available in a given case. But asking the revisional court to say that this piece of evidence should have weighed more than the other is nothing more than seeking a reassessment of evidence. Appreciation of evidence is a mental process involving selection, assessment and conclusion. Which statement ought to weigh and how much, cannot be rigidly laid down."

20. Thus considering the arguments of both the parties, and after examining the documents and appreciating evidence on record, this court is satisfied that the view taken and ultimate conclusion arrived at by the Appellate Court granting decree for possession of the suit premises on the ground that case falls under Section

13(1)(g) read with Sec. 13(2) of the Act, are justified, requiring no interference by this court in this Civil Revision Application under Sect. 29(2) of the Rent Act.

21. For the foregoing discussions, I find that this Civil Revision Application is devoid of merits and the same deserves to be dismissed and is accordingly dismissed. Rule is discharged, with no order as to costs.

22. Mr. A.N.Patel, learned advocate for the revision petitioner defendant/tenant requests this court that the petitioner may be granted some reasonable time to vacate the suit premises. Considering the facts and circumstances of the case, the defenant/tenant is granted a reasonable period of four months for vacating and handing over the possession of the suit premises to the respondent plaintiff/landlord, from the date of communication of writ of this court, on condition that defendant shall execute an undertaking within two weeks from the date of this order before this court to the effect that he will hand over vacant, peaceful and physical possession of the suit premises to the respondent plaintiff/landlord on or before four months granted as aforesaid and during this period, the defendant will not transfer, alienate or induct in any manner whatsoever with any person in respect of the suit premises. The defendant shall further to continue to pay mesne profits to the landlord.

Office is directed to send the writ of this court to the lower court, forth with.

Date: 27/6/2000. (H.H.MEHTA, J.)
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